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May 21, 2009

Attn: Ms. Mary Adams Central Coast Regional Water Quality Control Board 895 Aerovista Place, Suite 101 San Luis Obispo, CA 93401

RE: Comments for the 2009 303D List of Water Quality Limited Segments

Dear Ms. Adams:

My name is Colleen Enk. We have lived and ranched along the Salinas River, about half way between Paso Robles and San Miguel since the early 1970's. I am writing on behalf of the Salinas River Protection & Neighborhood Association. We have been involved in defending where we live from impact that various new sand and gravel mining proposals would impose over the last 20 plus years. Most recently, we have been noticed of 5-6 new mining proposals within a 3 mile radius in this Salinas River and its tributaries.

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We have attended various hearings at our County Planning Commission and Board of Supervisors. At these hearings, the Department of Fish and Game has held serious discussion and data of the Salinas River, currently, with the existing mines being in an overdraft situation where permitted extraction is exceeding the replenishment of the river. Of course this information opens the door for serious implications to water quality and availability as it relates to communities, infrastructure and environment all along this Salinas River. This new information indicates the Salinas River is already impaired and warrants top priority from the State. The depth of these new proposed mines are to be "within 1 foot of the water tables". A plan must be developed to correct this problem that is currently existing before further damage to our aquifers!

We are attaching transcripts from the testimony of Mr. Kit Custis, Department of Fish & Game, at the January 22, 2009 Plan Commission hearing in San Luis Obispo, CA, for the Pehl Mining Proposal as evidence of this important discussion. Thank you for considering the Salinas River on the Stated Impaired List.

Respectfully Submitted,

Colleen Enk

Colleen Enk

Salinas River Protection & Neighborhood Assn

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Excerpt from San Luis Obispo County Planning Commission Meeting, Regular Session, January, 22, 2009.

Item 1:

 Continued hearing to consider a request by JOHN PEHL for a Conditional Use Permit and Reclamation Plan. County File No: DRC2005-00027; Supervisorial District #1. Jeff Oliveira, Project Manager.

Commissioner Christie: My first speaker this morning is Kit Custis with California Department of Fish and Game. I beg your pardon? Oh, absolutely, and so I will change that, and our first speaker then is Ms. Debra Hillyard, also from the Department of Fish and Game.

Ms. Debra Hillyard: Good morning, Chair Christie and Honorable Commissioners, thank you for adjusting the order of speaking.

Commissioner Christie: Please state your name for the record.

Ms. Debra Hillyard: My name is Debra Hillyard and I'm here representing the California Department of Fish and Game. The Department of Fish and Game has an interest in the project as a Trustee and responsible agency, and we've worked closely with the County staff on this project and other proposed gravel mining projects in the area. Staff has invested hundreds of hours in this and other projects and should be commended for their efforts, which have been extraordinary. We have had concerns about this project in regard to potential significant and unmitigated impacts, including but not limited to the cumulative effects of this project in combination with other projects, and we have recommended the use of an EIR for this project. In addition, we support the development of a Specific Plan for the area to address regional needs, and we are willing to work with the County to help identify funding to help move that kind of a plan forward. In these economic times I'm not sure we'll come up with it, but we - it's important to us and we're willing to help you look for that funding. We have our experts here to provide you with the details of our concerns, and we really appreciate the opportunity to be here today to present this information. We have in particular Kit Custis, who is a senior engineering geologist in the Fisheries Engineering Program, and he's going to be presenting our specific concerns regarding the geology and geomorphology issues; and in addition I also have Kris Vyverberg, who is also Senior Engineering Geologist from the Fisheries Engineering Program. So hopefully Kit can provide you with specific issues and answer your questions.

Commissioner Christie: Ms. Hillyard, before you leave the podium, I don't appear to have a speaker slip for Kris, so if she has a —

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Ms. Debra Hillyard: I don't think she's going to be speaking today, but she is here representing the Department.

Commissioner Christie: Okay.

Ms. Debra Hillyard: We may have some continuity issues as it relates to the state budget and Kris may or may not be taking over for Mr. Custis in the future, so –

Commissioner Christie: Okay, thank you for that. Mr. Custis? And, do you have an approximate time frame that you need for your comments?

Mr. Kit Custis: Yeah, I think I've got around 25 slides so it may take 15 or 20 minutes if I'm quick.

Commissioner Christie: Okay; we have a big agenda and lots of speakers, so we really appreciate you being as succinct and brief as possible without sacrificing the detail and content.

Mr. Kit Custis: Thank you, Madam Chair and Members of the Commission. My name is Kit Custis, I'm an engineering geologist with the Department of Fish and Game, and this presentation just goes through some of the – and we have a number of technical issues with the monitoring program and stuff like that, but this goes through some of the bigger issues that are, that are more related to CEQA and overall environmental. Let's go to the next slide. We've seen this before; this is a Google picture of the site. You've got an outline of the extraction boundary and the operations, and the white is the actual mine boundaries according to the Reclamation Plan that was submitted. And in a number of slides I'm just going to keep dropping this over the top of them for a frame of reference. Next slide. This is a picture of the site, and this was provided by the Applicant in 1962; and what's important here is the flow of the channel, you can see is over on the righthand side of the picture, kind of going through the extraction area. The next slide. This is after the '69 flood, which had a major impact. You can see that the area – the channel has shifted to the left, you had a major impact on the drainage. And that next slide. Again in '78. You kind of have the '69 flood still being present in that, in the current, in the '78. And the next slide. And what I've done is I've taken the first photo I've shown you and dropped kind of outlines from '69 and '78 to kind of give you a feel for how the river is shifting back and forth across this project area; and the current site main channel, it's a little dark but you can see where the water is flowing through the, through the, oh, center of the picture, basically. One of the issues with a mine is is that you have to maintain a 50-foot setback from that active channel; and that as that boundary is defined today that's – it achieves that. The problem you run into is that if that channel starts shifting around, you start losing that 50-foot setback and then suddenly you have to adjust your mine. Next slide. The issues from Fish and Game perspective that are big CEQA issues are cumulative impacts from upstream existing mines and the proposed downstream mines. We have an issue of sediment replenishment; these mines are based on material moving down the system, replenishing what's been excavated, and there is a question of the amount, the timing of it, and an issue of bypass, whether -- there's a

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desire to have a 50-percent bypass of sediment flow and whether you're going to achieve that. Headcutting in the channel upstream and erosion downstream in the mine, the operator . . . this proposal we had some discussion about what is the final proposal, but in this proposal the operator was proposing to be - to excavate within 20 feet of the mine boundary, and – but the headcutting, downcutting downstream may extend outside of that boundary. And the problem with that is that actually triggers a – I'll leave it up to the state's Office of Mine Reclamation to tell you this, but that triggers a violation of ----, because you have a disturbance outside of the permitted mine boundary. And, you know, that becomes a problem because now you have to mitigate that, and how do you mitigate something that's not included in your project. So typically you end up going back and amending the project, but here the problem is – and I don't know the setting – is, is the land owned by the Applicant outside of the mine boundary, or have you now gone on to somebody else's property? Are you now trying to bring a project into someone else's land when, whether they like – you know, are they in agreement with that, you know, this becomes a very interesting problem; and solving that problem, mining outside the boundary problem has never been easy. There's a potential for the shifting of the active channel location. And then, we really lack an understanding of the groundwater. We don't have a – we don't have baseline for groundwater. It is a requirement for setback of one foot to high groundwater or to - you can't mine within the, within one foot of groundwater, but we don't really have a baseline for knowing where that is and whether that five-foot extraction depth is achievable. Next slide. We have a conflict – the Applicant's consultant has submitted documents for both Pehl and Pankey. In the Pehl site the upstream and downstream effects, five-foot depth of excavation, up to 100 foot of headcutting; looks like 1000 feet or so of what they call a clear water zone, and I'm just taking that, they didn't state 1000 but if you measure it on a map, that's about what it comes out to. And those are the reports; we had some discussion about where that information is coming from. In the Pankey site, it's a two-foot excavation; they indicated they may have 15 feet of headcut, 2500 feet of downcut. Very similar mines, they're excavating in the middle of the Salinas River, you know, taking - making a large excavation, and why. . . essentially, why you would have such a difference in headcutting, it's -- you know, I think that deserves discussion, because I think the Pankey is probably more realistic. Next slide. On this you can see at the bottom there's a yellow circle. This is coming from the Applicant's consultant saying that this is a place where the channel may change course, and it makes sense because you can see the 1962 channel at the South end. And then up at the top of the slide is a red-dashed line. That's this clear water area, the area that they're indicating that may scour because of the removing of the, of the sediment being transported in the mine area causes, you know, it's – some people call it hungry water, they're calling it clear water. And that's, essentially you're seeing that you're extending the impacts outside the boundary when you do that. Next slide. We already discussed this, 20-foot setback on the boundary, 50-foot active channel, 100-foot headcutting is gonna extend it outside the boundary; clear water is going to extend it outside. And the question comes up, how will the area impacts, impact by mining be monitored, mitigated, and how will it be reclaimed when they're outside the boundary? That administratively becomes a real problem. Next slide. Impacts to lowering the channel, lowering the channel upstream and downstream. You have impacts, potential impacts to habitat, riparian habitat. Pipelines, other infrastructure – we

don't really have an idea whether those are in the area or not. We have potential always to impact river banks, adjacent structures, there are some houses in the area. I don't know whether those are owned by the operator or whether they are somebody else's houses. And then you have, right downstream you have a proposed mine going in, and the question would be is, you know, that mine similarly is expected to be in a certain part of the channel; what happens if you change the, the channel configuration and how are you going to address those issues in a – from a mitigation standpoint if it occurs? Next slide. Groundwater depth. We don't understand where it is and how - what the condition is impacting riparian. We don't have any baseline information. And the onefoot setback that's in the permit – as far as I can tell is really not based upon a riparian impacts. It's based on the desire just for water quality, to maintain an operation that stays out of water. But whether the one-foot or not is sufficient, I don't know if we can say that at this point. Next slide. Now we get into the hard part. We have a large discussion about sediment delivery, how much sediment is moving through the system. We've been using a study that USGS did on Santa Margarita Reservoir. The reservoir has an area, marshland area, according to the USGS of about 110 acres. The Pehl site, you have -- the Applicant's consultant says you have 495 square miles of drainage area. There is a question as to whether or not the sediment yield will decrease with area, and I've kind of looked at it two ways, you can – even without assuming that, we don't have enough material. We early on had a problem with the density, whether – I suggested using the density of 1.5, the Applicant has some site information from Pankey that says 1.3, that's fine, we now have some data, we'll use 1.3. One of the more interesting problems is is this question of an average versus a median. We're dealing with data, with sediment that has moved from, mainly by major storms; and so the number we get is calculated as so many tons per square mile per year is an average, but it doesn't – it's, it's very skewed, it doesn't represent what actually would happen year to year. The median, which is much lower, is right in – you know, by definition it's 50 percent higher or 50 percent lower; it may be a better representation of how much is coming through the system on a yearly basis. We have a problem with the amount of allowable extraction, the maximum permitted versus the replenishment. Overall, there is too much being – been permitted, and with the proposed mines continuing permitting too much with how much replenishment there is. And another question of whether or not to allow or maintain the 50 percent bypass.

Commission Christie: Mr. Custis, before you move on from that point, are, is – are what you're – are you telling us that the current existing permitted extraction is exceeding the replenishment of the river?

Mr. Custis: Yes. When I – the last time I was before the Board I used information that was provided by the Applicant's consultant and I'll show you this in a bit. County staff have actually gone back in and gave us a table of how much is permitted for the mines that are out there, and then we have the applicants for the new mines. And then three of the mines are actually in the City of Paso Robles, so I got their staff to give me what the permitted amounts is, and I've added – there'll be a slide here, several slides which add that up and show you what I'm talking about. Next slide.

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Commissioner Christie: You're at the 10-minute mark, just an FYI, if you could try to wrap it up in the next five minutes.

Mr. Custis: We'll go through this very quickly. Essentially what we have is the Applicant has estimated – if you adjust for the density about 131,000 cubic yards per year coming through the system, that's based on this average. The median on something like that, now that's total. Well that - no, that's bedload. The next slide is total, which is a unit, 256 cubic yards per square mile per year in bedload. But the median is around 55. So you see a big difference between those two numbers, and the question is what can you expect from year to year; there's an issue of whether you can get three consecutive years' supply. Those are three to five-year events that are average years; you're not going to get those all in a row, they're not, you know, you're not, probability-wise you are not going to get those three five-year events occurring in three years in a row. It could happen, but it probably won't. Next slide. All I'm trying to with this is – we don't really have to go through this too much, but just to point out the highlighted areas what the amount of sediment and the return periods for these. Um, the upper ones showing you it's about a three to four-year return period; and the 55 cubic yards, it's about a two-year return period, so - next slide. We can kind of go through this, I'm just reiterating numbers and facts and where these, these sediment loads are coming from. A lot of information here, so we'll just go through for - go to the next slide. The gauge of Paso Robles; here's a question of whether or not you're getting these – how often do you get these three to fiveyear events, they are between a 6 and a 10,000-year event, this is an average mean daily flow and you can see how many over the course since '48 have actually gone in that range or gone above it. And the next slide is a peak – is a peak, you have a difference between a daily average versus a peak flow. But you can see that you don't often, you know, repetitively go in that – and that's a requirement for this replenishment concept. Next slide. My calculations, one of the questions is, is whether you take out the reservoir. It's 110 acres – 110 square miles; if you do, you end up with about 102,000 cubic yards per replenishment at the Pehl mine site. And that turns out to be, and you'll see in the next slide – that's about – you permitted, if you include the 80,000 cubic yards with Pehl, about 360,000 cubic yards upstream up Pehl if you include it; and so now you have 102,000 cubic yards coming in. You've got about three-and-a-half times permitted as you have replenishment. Next slide. You currently have six operational mines upstream of Pehl which have a total annual permitted extraction of 208,000 cubic yards per year; there's one permitted mine downstream, 50,000 cubic yards permitted. Pehl is 80,000. Add those together, you get 360,000 at Pehl. There's three additional mines in the process on the Salinas downstream of Pehl for 280, additional 280,000, and when you add on all the mines including the ones that are on the tributary like the ---- and stuff, you end up with a permitted extraction of 775,000 cubic yards. Next slide. And this is a photo showing – an image of showing where those are, and there's a table, which – if you go to the next slide there's a blow-up of that table to identify where this permitting is coming from. Some of them are idle; uh, some of them are not in stream. What's important with an idle mine is that it's not – it's not a closed mine. It simply means based on SMARA law that they're producing less than 10 percent of their previous maximum; but they can go the next year back to producing up to their limit, that's - they haven't really closed. So they still should be considered an active mine up to their limit.

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Next slide. And these are just the conclusions. We have a sediment replenishment that's less than permitted. We have a question of how you are going to maintain the 50-percent bypass. There's no analysis of the mitigated effects of the six permitted mines upstream or, in total, 14 mines in the Paso Robles area. Next slide. We have an issue of the distance upstream and downstream and mitigations – how do you mitigate outside of the mine boundary? And then we have no baseline for groundwater and riparian. And that's the last slide.

Commissioner Christie: Thank you, Mr. Custis, and congratulations for condensing your 25-minute presentation into 15. I'm sure you'll be available for questions.

Mr. Custis: Yeah; yeah.

Commissioner Christie: Thank you.

Mr. John Nall: Madam Chair, we al-- if I may, John Nall, we also have Mr. Tom Kukol with the Regional Water Quality Control Board here.

Commissioner Christie: Yes, I have his speaker slip next on my list. Mr. Kukol, welcome, thank you for coming down this morning. How much time do you think you'll need this morning?

Mr. Tom Kukol: I'll be brief, I really don't like to talk.

Mr. Tom Kukol: Mr. Custis presented a detailed analysis; we are a little more conceptual in the approach to instream sand and gravel mining. Our letter that we sent referenced cumulative impacts from all the mines, and that's something that's necessary. There's a whole field of study for morphology that says that you need to look at these things in the greater context. Sand is a resource, much like water is a resource. We need to understand how much of that resource you can safely extract before you do significant damage. That's what we are asking. We – the nexus to our agency is that when you extract sand and gravel from a mine you change -- or from a river, you change the form and function of that river, and that affects water quality. We're a water quality agency. We're a responsible agency with regards to CEQA, so we do have some permitting authority over any such mining activity, and hopefully we can get the questions we need answered answered at this level before they come to our Agency and require maybe more hardships on the applicants. We support the area, the notion of the Salinas River Watershed Specific Plan; I believe that is a commonsense assumption as to where things are going. The Applicant might have a difference of opinion here as to what Mr. Custis testified to; and if that's the case your Staff points out that CEQA requires that an EIR would be necessary. I won't go into much more detail than that, but I'm available for questions if you need.

Commissioner Christie: Thank you, Mr. Kukol, and I hope you will stick around for a bit for questions because I'm sure there will be. That concludes the staff presentation and public agency presentation.